Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 94-892

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER, 1994

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SUPREME COURT, U.S.

Loralyn McKinley, Esquire, Guardian
Ad Litem for C. W., Petitioner

v.

Delores Wasiek, Respondent

RESPONSE TO GUARDIAN'S

SUGGESTION OF MOOTNESS AND REQUEST FOR VACATUR

Marta Engdahl, Esquire
Counsel for Respondent

P. O. Box 6994
Charlottesville, Virginia
22906

(804) 984 1787

TABLE OF CITATIONS

STATUTES:

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Title 20, Pennsylvania Consolidated Statutes, Section 5521 Decedents, Estates and Fiduciaries)) 3

CASES:

Izumi Seimitsu Kogyo Kubushiki Kaisha v. U. S. Phillips Corp., 510 U. S. ____, ____, 114 S. Ct. 425, 428, 126 L. Ed. 2d 396 (1993) 4

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United States Bancorp Mortgage Co. v. Bonner Mall Partnership, ____ U. S.____, 115 S. Ct. 386 (1994) 2, 4

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RESPONSE TO GUARDIAN'S
SUGGESTION OF MOOTNESS AND REQUEST FOR VACATUR

Respondent, Delores Wasiek, replies as follows to the Guardian's Suggestion of Mootness and Request for Vacatur:

The tubal ligation procedure which was the subject of the initial court proceeding in the Orphan's Court of Philadelphia County, Pennsylvania initially requested in December, 1987, was accomplished without incident on December 30, 1994, following the Order of the U. S. Supreme Court dated November 28, 1994, denying the Guardian's Re-Application for Stay pending Appeal. Copies of the available medical records are attached.

Counsel for the Respondent was notified by letter dated January 9, 1995, and so notified the Guardian ad Litem on January 12, 1995, and the Clerk of the U. S. Supreme Court on January 17, 1995, suggesting that the issue is moot and dismissal is

appropriate, and attaching pertinent medical records.

Following receipt of the Petitioner's Suggestion of Mootness and Request for Vacatur, the Respondent opposes the Petitioner's Request for Vacatur as inappropriate.

Pursuant to 28 U.S.C. 2601, the court may vacate proceedings. This language is permissive, not obligatory. However, such action is an extraordinary remedy and requires exceptional circumstances and such action should serve the interests of justice. U. S. Bancorp Mortgage Co. v. Bonner Mall Partnership, ____ U.S. ____, 115 S. Ct. 386 (1994).

This case was begun in 1987 and, at each stage of the appellate process, the Guardian Ad Litem has requested a Stay of the proceedings. A Request for Stay is based, in part, on the likelihood of success on appeal. The Pennsylvania Supreme Court denied both the request for Stay Pending Appeal and subsequently denied the Petition for Writ of Certiorari.

The requested tubal ligation procedure was not a matter of happenstance, but was accomplished pursuant to Order of this Court. Such a decision to deny the Guardian Ad Litem's Re-Application for Stay Pending Appeal was made in full contemplation and recognition of the consequences of the

decision, i.e., that the requested tubal ligation was therefore going to become accomplished. This action was not unilateral but was taken pursuant to denial of the Guardian's Re-Application for Stay. Although the issue of tubal ligation then became moot, it did not become as if the controversy had never arisen or had never been litigated. The case should not be obliterated.

Subsequent to the initiation of this case before the Orphan's Court in Philadelphia, in 1992, and prior to the Oral Reargument before the Superior Court of Pennsylvania *en banc*, the Pennsylvania State Legislature passed legislation concerning this issue. (Title 20, Pennsylvania Consolidated Statutes, Section 5521 (Decedents, Estates and Fiduciaries)). Thereafter, the Pennsylvania Attorney General's Office was notified of the proceedings in this case. Such statutory authority is cited in the Opinion of the Superior Court of Pennsylvania. This case has become part of the case law and should not be vacated.

This case has been vigorously and fully and fairly litigated at each stage of the proceedings, from the initial Trial Court proceeding in which there were seven days of trial. The lower courts have written well-reasoned opinions based on the facts in controversy. The Supreme Court of Pennsylvania which determined to not review the case and which upheld the order of the Trial

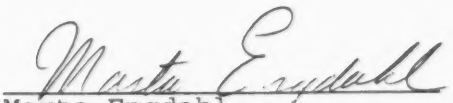
Court should be the final word on cases emanating from its courts.

The Supreme Court of the United States should not rush to vacate a State Court decision. The occasion to do so is rare. United States v. Hamburg-Amerikanische Packetfahrt-Actien Gesselschaft, 239 U.S., 466, 36 S.C. 212, 60 L.Ed. 387, Plumbers and Steamfitter's Union, Local #598 V. Dillion, 255 F. 2d 820, C. A. Wash., 1958. Mootness can arise as a result of settlement of a case but a case should not be vacated because the issues are moot. U. S. Bancorp. Mortgage Co. v. Bonner Mall, *supra*.)

The petitioner must show equitable entitlement to the extraordinary remedy of vacatur as well as that such a decision would serve the public interest. U. S. Bancorp. Mortgage Co. v. Bonner Mall, *supra*.) Judicial precedents are presumptively correct and valuable to the legal community as a whole and should stand unless a court concludes that the public interest would be served by a vacatur. No such argument has been offered or shown. It is inappropriate to vacate mooted cases which action then leaves an assumption about the merits of the case. Izumi Seimitsu Kogyo Kubushiki Kaisha v. U. S. Phillips Corp., 510 U. S. ____, ____, 114 S. Ct. 425, 428, 126 L. Ed. 2d 396 (1993).

WHEREFORE, respondent, through counsel, respectfully requests that the Court dismiss the case as moot and deny the Guardian's Request for Vacatur.

Respectfully submitted,



Marta Engdahl
Counsel for Rspondent

P. O. Box 6994
Charlottesville, Virginia
22906
(804) 984 1787

01-09-1995 11:33 P.01

VANGUARD
OB/GYN SERVICES

One Penn Boulevard
Suite 100
Philadelphia, PA 19144
215-848-5500 Fax 215-848-3820

PATIENT'S NAME Cortman DATE _____

___ PLEASE BE ADVISED THAT THE ABOVE NAMED PATIENT WAS SEEN IN MY OFFICE TODAY FORN AN EXAMINATION

___ THE ABOVE PATIENT IS PRESENTLY _____ PREGNANT WITH AN ESTIMATED DATE OF COMFINEMENT OF _____.

___ PLEASE BE ADVISED THAT THE ABOVE NAMED PATIENT IS UNDER MY CARE AND MAY RESUME WORK ON _____.

___ THE ABOVE PATIENT HAS BEEN UNDER MY CARE FROM _____ TO _____ AND CAN RESUME NORMAL ACTIVITES.

___ PLEASE BE ADVISED THAT THE ABOVE NAMED PATIENT IS PRESENTLY UNDER MY CARE AND WILL BE OUT OF WORK FOR _____.

___ PLEASE BE ADVISED THAT THE ABOVE NAMED PATIENT WILL BE HAVING SURGE ON _____ AND MAY RETURN TO WORK ON _____ UNLESS WE NOTIFY YOU OF A CHANGE.

OTHER COMMENTS Mrs. L _____ is a patient of mine whom I performed a tubal ligation on 12-30-94. This is a minor surgical procedure, the patient is discharged on the day of procedure.

THANK YOU,

N. E. Sloane

NEIL E. SLOANE, M.D.
PHILIP J. HORN, M.D.
JUANITA BURTON, M.D.

INFORMATION
215/951-8731

CENTRAL OUTPATIENT REGISTRATION
215/951-8932

The Germantown Hospital and Medical Center

ONE PENN BOULEVARD ■ PHILADELPHIA, PENNSYLVANIA 19144

PATIENT INFORMATION

ACCOUNT NO. G001806106
TYPE PRE SDC

REGISTRATION DATE 12/30/94
REGISTRATION TIME
LOCATION SAME DAY SURGERY

MEDICAL RECORD NO. M0331584
FINANCIAL CLASS HEALTH MAINT
SOCIAL SECURITY NO. 182-54-4076

PATIENT

NAME
STREET W ,CYNTHIA
5428 N 2ND ST
CITY/STATE/ZIP PHILA,PA 19120
PHONE 224-4240
COUNTY PHILADELPHIA COUN

D.O.B. 07/06/68
AGE 26
SEX F
RACE WHITE
RELIGION CHRISTIAN
MAR. STS. SINGLE

PATIENT EMPLOYER

NAME
STREET
CITY/STATE/ZIP
PHONE

EMPLOYMENT STATUS:

GUARANTOR

NAME
STREET W ,CYNTHIA
5428 N 2ND ST
CITY/STATE/ZIP PHILA,PA 19120
PHONE 224-4240
SOCIAL SEC. NO. 182-54-4076

NEXT OF KIN

NAME BAKER,PAULINE
STREET 5428 N 2ND ST
CITY/STATE/ZIP PHILA,PA 19120
PHONE 224-4240
RELATIONSHIP OTHER

GUARANTOR EMPLOYER

NAME
STREET
CITY/STATE/ZIP
PHONE

INSURANCE

	POLICY NUMBER	GROUP NUMBER	SUBSCRIBER
USHC	WDG46010		W ,CYNTHI

PRE AUTHORIZATION 5418089

REASON FOR VISIT VOL STERILIZATION/LAP TUBAL LIGATION/123094

REFERRING PHYSICIAN TELEPHONE NUMBER

REMARKS Sloane,Neil E. (215) 848-5500

REGISTRAR

PRE & PATS THIS # 122794 ANCO PA10410790

12/30/94 COR# G001806106
W ,CYNTHIA
Time MR# M0331584

12/30/94 COR# G001806106
W ,CYNTHIA
Time MR# M0331584

12/30/94 COR# G001806106
W ,CYNTHIA
Time MR# M0331584

The Germantown Hospital and Medical Center

ONE PENN BOULEVARD ■ PHILADELPHIA, PENNSYLVANIA 19144

TYPE OF ADMISSION
- ☑ SURGICAL DAY CARE
- ☐ POST OPERATIVE
- ☐ REGULAR
- ☐ TREATMENT ROOM

PRE-REGISTRATION TEST REQUEST FORM

ATIENT INFORMATION

DATE OF SURGERY/ADMISSION 12/30/94

ME Cynthia W DATE OF BIRTH 7/6/68 SOCIAL SEC. NO. 182-54-4076

DRESS 5428 N. 2nd St TELEPHONE (HOME)

Y/STATE/ CODE Phila Pa 19120 TELEPHONE (OFFICE) Mother - 427 1846

URANCE ME USHC POLICY WDG46010 GROUP

E-CERTIFICATION QUIRED ☑ YES ☐ NO DATE OBTAINED 12/8/94 AUTHORIZATION NUMBER 5418089 SECOND OPINION REQUIRED ☐ YES ☒ NO LENGTH OF STAY

IMARY GNOSIS Voluntary Sharnette sterilization

RGICAL/ DICAL PROCEDURE laparoscopic tubal ligation

MITTING YSICIAN Neil E Sloane, MD

REQUIRED DIAGNOSTIC TESTS

ORATORY: ☐ HEMOGLOBIN AND HEMATOCRIT (HH) ☐ BUN (BUN) ☐ GLUCOSE (GLU) ☐ SGOT (SGOT)

OLOGY: ☐ CHEST (CXR)

DIOLOGY: ☐ EKG (EKG)

OTHER TESTS

ORATORY: (LAB)	TO BE COMPLETED TGHMC	TO BE COMPLETED PRIMARY OFFICE	RESULTS RECEIVED DATE
TROLYTES PROFILE (LYTE)	☐	☐	☐
OING TIME (BT)	☐	☐	☐
LOGY (RPR)	☐	☐	☐
LYSIS (UA)	☐	☐	☐
HOSPHATASE (AP)	☐	☐	☐
RIAL BLOOD GAS (ABG)	☐	☐	☐
ANA)	☐	☐	☐
TININE (CREA)	☐	☐	☐
OSE TOLERANCE HOUR (2HGTT)*	☐	☐	☐
MATOID FACTOR (RF)	☐	☐	☐
PTAKE (T3)	☐	☐	☐
4)	☐	☐	☐
')	☐	☐	☐
TSH)	☐	☐	☐
ER PHENYTOIN LEVELS ☑	☐	☐	☐
PHENOBARBITAL LEVELS ✓			

BLOOD BANK: (BBK)	TO BE COMPLETED TGHMC	TO BE COMPLETED PRIMARY OFFICE	RESULTS RECEIVED DATE
TYPE & SCREEN (TS)	☐	☐	☐
CROSS MATCH FOR _____ UNITS OF BLOOD	☐	☐	☐
OTHER _____	☐	☐	☐
CHEMISTRY PROFILE: (LAB)			
CHEM 1 (CH1)	☐	☐	☐
CHEM 5 (CH5)	☐	☐	☐
CHEM 8 (CH8)	☐	☐	☐
OTHER BHCG	☑ ✓	☐	☐
HEMATOLOGY/COAGULATION: LAB			
CBC (CBC)	☐	☐	☐
CBC with DIFF (CBCD)	☑ ✓	☐	☐
ERYTHROCYTE SEDIMENTATION RATE (ESR)	☐	☐	☐
PLT & RETIC (PR)	☐	☐	☐
PROTHROMBIN (PT)	☑ ✓	☐	☐
PARTIAL THROMBOPLASTIN TIME ACTIVATED (APTT)	☐ ✓	☐	☐
OTHER _____	☐	☐	☐

CIAL INFORMATION:

21 10/93

MEDICAL RECORDS COPY

EN-CREST SERVICES
ential Services. One Plymouth Meeting. Suite 200. Plymouth Meeting. PA 19462. (215) 825-9360

MEDICAL VISITS

To be filled out prior to visit:

Date: 12/30/94

Resident: Cynthia Sue

Staff: mother

Doctor: Dr Stone Phone No.: 848-5500

Reason for visit: elective sterilization
(tubal ligation)

Questions for the doctor:

1.

2.

3.

Diagnosis/Condition: elective sterilization

____ Chronic ____ Acute ____ One-time ____ Resolved

Treatment/Approaches (Please specify all):
tubal ligation - laparoscopy

Medications prescribed? Yes X No ___

Follow-up needed? Yes ___ No ___

Special Instructions:
RTO - 4 wks for sup

Doctor's Signature MD

Date 12/30/94

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Response to Guardian's Suggestion of Mootness and Request for Vacatur by postage prepaid as follows:

Loralyn McKinley, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, Pa. 19102

Matthew M. Strickler, Esquire
Leslie H. Smith, Esquire
1745 Market Street
Philadelphia, Pa. 19102

Marta Engdahl

Marta Engdahl

P. O. Box 6994
Charlottesville, Virginia
22906

2/8/95